

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

10 JOSE E. FALU-MENDOZA, } Civil No. 07CV0369 JAH (JMA)
11 Petitioner, }
12 v. } **ORDER DENYING CERTIFICATE
13 J.W. SULLIAVAN, Warden, et al., } OF APPEALABILITY**
14 Respondents. }

15 On April 18, 2007, this Court entered judgment dismissing the instant petition for writ
16 of habeas corpus brought by petitioner pursuant to 28 U.S.C. § 2254. On June 18, 2007,
17 petitioner filed a Notice of Appeal. Although petitioner does not expressly seek a certificate of
18 appealability, this Court *sua sponte* considers whether a certificate of appealability should be
19 granted. See Fed.R.App.P. 22(b); United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir.
20 1997) (“If no express request is made for a certificate of appealability, the notice of appeal shall
21 be deemed to constitute a request for certificate”).

22 A certificate of appealability is authorized “if the applicant has made a substantial
23 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To meet this
24 threshold showing, petitioner must show that: (1) the issues are debatable among jurists of
25 reason; or (2) that a court could resolve the issues in a different manner; or (3) that the
26 questions are adequate to deserve encouragement to proceed further. Lambright v. Stewart, 220
27 F.3d 1022, 1024-25 (9th Cir. 2000)(citing Slack v. McDaniel, 529 U.S. 473 (2000) and
28 Barefoot v. Estelle, 463 U.S. 880 (1983)).

1 Here, the Court dismissed petitioner's writ of habeas corpus because the Court is barred
2 from considering the claims by the abstention doctrine announced in Younger v. Harris, 401
3 U.S. 37 (1971), which require federal courts to not interfere with ongoing state criminal
4 proceedings absent extraordinary circumstances. Petitioner having admitted in his petition that
5 no decision on his direct appeal before the California Court of Appeal had been rendered at the
6 time he filed his federal habeas petition, and having found no extraordinary circumstances
7 existed which would relieve the Court of its obligation to abstain from interfering with the state
8 court proceedings, this Court dismissed the petition without considering the merits of
9 petitioner's claims. Under these circumstances, this Court finds that a certificate of
10 appealability is not warranted because the decision to abstain in this case is not an issue
11 debatable among jurists of reason nor could any other court resolve the issue in a different
12 manner. Lambright, 220 F.3d at 1024-25. Accordingly, this Court **DENIES** a certificate of
13 appealability as to the claims presented in the instant petition.

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15 Dated: June 21, 2007

HON. JOHN A. HOUSTON
United States District Judge